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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,408	10/29/2003	Ahmad Akashe	67469	7256

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SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/697,408

Applicant(s)

AKASHE ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I in the reply filed on 10/27/05 is acknowledged. The traversal is on the ground(s) that the product is limited to the process set forth within the respective product claims and may not be restricted and that because the two Groups are classified in the same class and subclass the search for both is the same. This is not found persuasive because the product claims are not limited by the process limitations therein but by the attributes of a product made by such process. A reason for restricting same based on a different process was provided in the Restriction Requirement wherein it is asserted that a product falling within the scope of the product claims would be produced. Moreover, it should be noted that 102 references below further evidence different processes employed to produce a product falling within the scope of the instant product claims. Regardless of the classification being the same for each Group, the search for each group extends well beyond one classification class/subclass and differs in whole between both groups. Moreover, the search strategy required for each invention is different.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 and 9-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Goodnight, Jr. et al.

Goodnight, Jr. et al discloses a soy protein with improved functionality wherein same is employed in a food product (e.g. meat) and in a beverage (e.g. soy milk) in an amount of about 2 g per 100 g.

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Goodnight, Jr. et al. In re Thorpe, 227 USPQ 964.

4. Claims 1-4 and 9-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Porter et al (U.S. Patent No. 6830773).

Porter et al discloses a soy protein with retained high functionality wherein same is employed in a food product (e.g. meat) in an amount of about 3 g per 100 g (e.g. Abstract; col. 1, lines 37-47; claim 3).

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product

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produced by employing the different processes or combination of same would provide for a different product from that set forth in Porter et al. In re Thorpe, 227 USPQ 964.

5. Claims 1-4 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gupta et al.

Gupta et al discloses a soy protein with improved functionality wherein same is employed in a food product (e.g. Abstract)

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Gupta et al. In re Thorpe, 227 USPQ 964.

6. Claims 1-4 and 9-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Bringe.

Bringe discloses a soy protein with improved functionality wherein same is employed in a food product (e.g. meat) in an amount of about 2 g per 100 g (e.g. Abstract; Example 7).

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Bringe. In re Thorpe, 227 USPQ 964.

7. Claims 1-4 and 9-12 are rejected under 35 U.S.C. 102(e) as being anticipated by

Alli et al.

Alli et al discloses a soy protein with improved functionality wherein same is employed in a food product (e.g. Abstract).

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Alli et al. In re Thorpe, 227 USPQ 964.

8. Claims 1-4 and 9-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Altemueller et al.

Altemueller et al discloses a soy protein with improved functionality wherein same is employed in a food product (e.g. meat) in an amount of about 3 g per 100 g (e.g. col. 5, lines 1-15; col. 25, lines 49-62).

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Altemueller et al. In re Thorpe, 227 USPQ 964.

9. Claims 1-4 and 9-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Sailer.

Sailer discloses a soy protein with improved functionality wherein same is

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employed in a food product (e.g. meat) in an amount of about 4 g per 100 g (e.g. col. 3, lines 25-31; Example 6).

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Sailer. In re Thorpe, 227 USPQ 964.

10. Claims 1-4 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Friedman et al.

Friedman et al discloses a soy protein with improved functionality wherein same is employed in a food product (e.g. Examples).

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Friedman et al. In re Thorpe, 227 USPQ 964.

11. Claims 1-4 and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Murray et al.

Murray et al discloses a soy protein with improved functionality wherein same is employed in a food product (e.g. meat) (e.g. Abstract; col. 6, lines 35-42).

It is noted that the instant claims recite many method limitations. However, it

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should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Murray et al. In re Thorpe, 227 USPQ 964.

12. Claims 1-4 and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Jolly.

Jolly discloses a soy protein with improved functionality wherein same is employed in a food product (e.g. meat) (e.g. Abstract; Example 26).

It is noted that the instant claims recite many method limitations. However, it should be noted that patentability is based on the product itself and does not depend on its production in and of itself. Moreover, it is not seen where the particular product produced by employing the different processes or combination of same would provide for a different product from that set forth in Jolly. In re Thorpe, 227 USPQ 964.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Jolly or Murray taken together with any one of Altemueller, Sailer, Bringe, Porter et al, or Goodnight, Jr. et al.



Jolly and Murray et al are silent regarding the particular amount of soy protein material containing in a food product as called for in the instant claims. However, such amounts as called for in the instant claims are known in food products such as meat analogs or meat products as taught, for example, by any one of Altemueller, Sailer, Bringe, Porter et al, or Goodnight, Jr. et al. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such amounts in meat products as taught by each one of said references as a matter of preference well within such well known amount values as set forth in the prior art.

15. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Friedman et al, Alli et al, and Gupta et al taken together with any one of Altemueller, Sailer, Bringe, Porter et al, or Goodnight, Jr. et al.

Friedman et al, Alli et al, and Gupta et al are silent regarding the use of said protein therein in, for example, meat products and the particular amount of soy protein material containing in a food products as called for in the instant claims. However, the use of highly functional soy protein products in meat products and the use of same in food products in the amounts as called for in the instant claims are known. For example, any one of Altemueller, Sailer, Bringe, Porter et al, or Goodnight, Jr. et al teach the use of highly functional soy protein material in meat or meat analog product as well as the use of same in food products within the amounts as called for in the instant claims. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such amounts in meat products as taught by each one of said references as a matter of preference well within such well known

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amount values as set forth in the prior art.

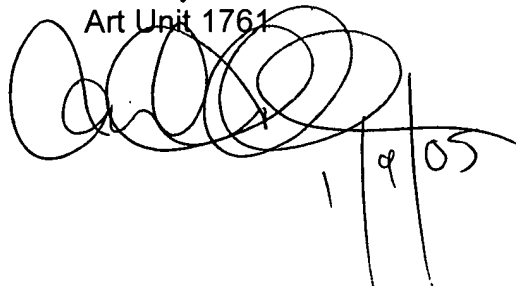
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
January 9, 2006

Anthony Weier  
Primary Examiner  
Art Unit 1761



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